

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

GUAIRONEX MARTINEZ,

Plaintiff,

v.

BROOKMONT HEALTH CARE CTR.,

Defendant.

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**3:18-CV-1557
(JUDGE MARIANI)**

ORDER

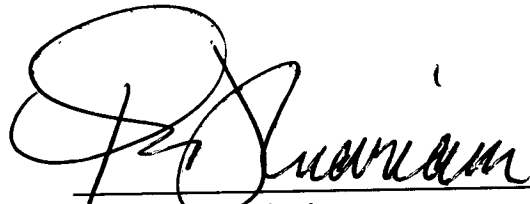
AND NOW, THIS 6th **DAY OF MAY, 2019,** upon review of Chief Magistrate Judge Schwab's Report and Recommendation ("R&R") (Doc. 22) for clear error or manifest injustice, **IT IS HEREBY ORDERED THAT** the R&R (Doc. 22) is **ADOPTED AS MODIFIED:**

1. Defendant's Motion to Dismiss Plaintiff's Complaint (Doc. 17) is **GRANTED**.
2. The above-captioned action is **DISMISSED** for the reasons set forth in the R&R.

However, the dismissal is **WITHOUT PREJUDICE** to the right of Plaintiff to file an Amended Complaint within **21 days of the date of this Order**, which properly sets forth a basis for diversity of citizenship.¹

¹ The R&R correctly notes that Plaintiff's Complaint (Doc. 2) alleges that Plaintiff Guaironex Martinez resides in Stroudsburg, PA, and that Defendant Brookmont Health Care is located in Effort, PA. Nonetheless, 28 U.S.C. § 1332 directs that, in determining whether diversity of citizenship exists, a corporation is a "citizen of every State . . . by which it has been incorporated and of the State . . . where it has its principal place of business". Thus, Defendant's address provided by Plaintiff is not dispositive of the issue of diversity. Here, Defendant asserts in its brief in support of its motion to dismiss that "Brookmont Health Care Center is both incorporated in and has its principal place of business in Pennsylvania" (Doc. 18, at 5), an assertion which lacks any support in the record. Although the Court recognizes that "the burden of establishing the [existence of subject-matter jurisdiction] rests upon the party asserting jurisdiction," *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994), *i.e.* Guaironex Martinez, and that Plaintiff has not, at this time, set forth facts in his Complaint properly pleading diversity of

3. The action is **REMANDED** to Chief Magistrate Judge Schwab for further proceedings consistent with this Order.



Robert D. Mariani
United States District Judge

citizenship, the Court is hesitant to dismiss the Complaint with prejudice without allowing the *pro se* Plaintiff an opportunity to understand the jurisdictional issues and attempt to amend his complaint if he believes there is a basis for asserting that Defendant is incorporated in a different state and that Defendant's principal place of business is outside of Pennsylvania. Given the *pro se* nature of the Complaint and Defendant's unsupported statement attempting to demonstrate a lack of diversity, the Court cannot unequivocally conclude that diversity of citizenship does not exist. Plaintiff will thus be permitted an opportunity to amend his complaint to attempt to cure the jurisdictional deficiencies noted in the R&R and herein.